



**THE ATTORNEY GENERAL  
OF TEXAS**

Gerald C. Mann

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. George W. Cox  
State Health Officer  
Texas State Board of Health  
Austin, Texas

Opinion No. O-5720  
Re: Whether criminal prosecution can be had under Article 165-3, V.A.C.S.

Dear Sir:

We have your letter reading as follows:

"A question has arisen concerning the prosecution of cases under Article 165-3 Revised Civil Statutes of Texas, which is commonly referred to as the Texas Milk Grading and Labeling Law.

"It will be noted that Section 8 of this Statute provides for a penalty by fine in an amount not less than \$25.00 and not more than \$200.00. However, a similar statute is not found in the Penal Code defining such acts as a violation.

"Therefore, I would like to know whether or not the State Department of Health may file a criminal complaint and prosecute such case under Article 165-3 Revised Civil Statutes of Texas."

Section 8 of Article 165-3, Vernon's Annotated Civil Statutes, provides that whoever violates any provisions of the Act referred to in your letter shall be subject to a fine and that each violation shall constitute a separate offense. It makes no difference that this regulatory Act is not carried forward and incorporated in the penal statutes. Violations of its terms are nevertheless punishable as criminal offenses and your department is authorized to file criminal complaints against offenders and prosecute the same.

APPROVED DEC 15, 1943  
/s/ Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS  
APPROVED: OPINION COMMITTEE  
BY: BWB, CHAIRMAN  
EH:db:wb

Yours very truly  
ATTORNEY GENERAL OF TEXAS  
By /s/ Elbert Hooper  
Elbert Hooper, Assistant